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5 UNITED STATES BANKRUPTCY COURT
6 NORTHERN DISTRICT OF CALIFORNIA

7 In re

8 NATHAN and DAROLEEN PACO,

No. 03-10178

9 Debtor(s).
10 _____/

11 Memorandum on Motion to Dismiss
12 _____

12 Debtors Nathan Paco is an attorney who practices bankruptcy law. He and his wife Daroleen
13 Paco filed their first *pro se* Chapter 13 petition on July 17, 2002. They explained their need to file in a
14 memorandum filed on December 2, 2002 in that case:

15 “To Nathan’s surprise, he found out that in California, to practice in a bankruptcy
16 court, you must pay \$125.00 to each of the District Courts that the Bankruptcy Court is a part
17 of that an attorney practices in. He found this out when the Honorable Judge Dennis Montali
18 ruled that Mr. Paco was out of business because he was not a member of the Unites States
19 District Court, Northern District of California since he did not apply for membership to that
20 court and pay his \$125.00 to them. Therefore, the court ruled that Mr. Paco had to return all
of the fees he had collected from a former client. The comments of the judge strongly
suggested that Mr. Paco had to return all of the fees he has collected over twelve years he
had practiced bankruptcy law in California. If Mr. Paco had to turn over those fees, he and
his family cannot survive. Therefore, the Paco family needs the protection of the court.”

21 On November 18, 2002, the court dismissed the Pacos’ case because they had failed to attend the
22 meeting of creditors and had not complied with the Chapter 13 trustee’s reasonable requests for
23 documents. On December 2, 2002, the Pacos filed a motion for reconsideration of the dismissal. They
24 set the hearing on their motion for December 16, 2002, at 1:30 P.M.

25 The Pacos commenced this case at 12:01 P.M. on December 16, 2002, improperly filing in San
26 Francisco. Their petition failed to mention their first petition, despite a requirement that all filings within

1 the previous six years be disclosed. During an extended hearing on his motion later that afternoon,
2 Nathan Paco never mentioned that he had filed this second petition.

3 The court took Paco's motion under submission. It then learned that the Pacos had filed a new
4 petition, and for that reason denied the motion for reconsideration of the dismissal of the first petition.
5 This case was then transferred to this court from San Francisco. The Pacos' confirmation hearing was
6 held on March 17, 2003, with the Chapter 13 trustee seeking dismissal with a bar to re-filing based on
7 the Pacos' demonstrated bad faith. For the reasons set forth below, the court will grant the trustee's
8 motion.

9 The obligation of good faith is imposed on the debtor at two stages of a Chapter 13 proceeding.
10 First, the debtor must file his petition for Chapter 13 bankruptcy in good faith. Second, the debtor must
11 file his Chapter 13 plan in good faith. *In re Smith*, 286 F.3d 461, 465 (7th Cir. 2002); 8 Lawrence P.
12 King et al., **Collier on Bankruptcy**, at 1325-13 (15th ed.2001). The Pacos have demonstrated bad faith
13 at both stages.

14 The Pacos have demonstrated bad faith by disingenuously arguing for relief from the prior
15 dismissal without disclosing their second petition and by filing a false petition which failed to disclose
16 the first petition. Both of these actions demonstrate that this case was commenced in bad faith and merit
17 dismissal of this case without considering the merits of the Pacos' plan.

18 In addition, it is evident that the Pacos' plan is itself unconfirmable on the merits due to bad faith.
19 Despite the Pacos' avowed purpose in filing to avoid the consequences of twelve years of practice while
20 not admitted to the bar of this court, and despite the fact that they expect to use the discharge granted in
21 this case as a defense to any claims by former clients, those former clients have not been scheduled as
22 creditors. The Pacos propose to pay \$125.00 per month for 60 months, all of which would go to
23 nondischargeable tax debt and nothing to unsecured creditors. Manipulation of the provisions of Chapter
24 13 in this manner is bad faith. *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999); *In re Goeb*, 675 F.2d
25 1386, 1391 (9th Cir.1982).

26 The petition commencing this case falsely fails to disclose the Pacos' prior petition. In the prior

1 case, the Pacos argued for reinstatement while failing to disclose to the court that they had filed a second
2 petition. Their plan is an unconfirmable attempt to receive a discharge without affording all creditors
3 due process. Accordingly, the trustee's motion to dismiss will be granted and this Chapter 13 case will
4 be dismissed with a bar to re-filing any bankruptcy petition in any court for a period of 180 days.¹
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7 Dated: March 20, 2003

8 Alan Jaroslovsky
9 U.S. Bankruptcy Judge
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25 ¹The trustee has not sought, and the court will not at this time order this case dismissed *with*
26 *prejudice*, which would render all of the Pacos' debt forever nondischargeable pursuant to *Leavitt*.
However, that drastic remedy remains within the power of the court if the Pacos file a petition before the
bar has expired or persist in bad faith behavior.